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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

01

FILE:

SRC 01 128 53094

Office: TEXAS SERVICE CENTER

Date:

JAN 26 2005

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Marie Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS) indicates that the First Brazilian Baptist Church of Austin is the petitioner. The petition, however, is signed by [REDACTED] Furthermore, the G-28, Notice of Entry of Appearance as Attorney or Representative, is signed by Mr. [REDACTED] and not by an authorized representative of the First Brazilian Baptist Church of Austin. Therefore, the First Brazilian Baptist Church of Austin cannot be considered as having filed the petition on behalf of Mr. [REDACTED] and Mr. [REDACTED] shall be considered as the self-petitioner.

The self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner failed to establish that the religious organization with which he was associated qualified as a bona fide nonprofit religious organization. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that he was qualified for the position within the organization. The director further determined that the petitioner had not established that the prospective employer had extended a qualifying job offer or that it had the ability to pay the petitioner the proffered salary.<sup>1</sup>

On appeal, counsel submits a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

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<sup>1</sup> By letter dated September 9, 2004, counsel notified CIS that the petitioner has resigned his position with the church.

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

This case centers on the identity of the petitioner’s prospective U.S. employer. The Form I-360 indicates that the employer is the First Brazilian Baptist Church of Austin. However, in a letter dated July 31, 2002, Marshall Smith, the business administrator of the First Baptist Church of Austin, states that the First Baptist Church of Austin is the petitioner’s sponsor, and that the petitioner is pastor of the church’s Brazilian Mission. Mr. [REDACTED] states that the First Baptist Church of Austin “acts as the guarantor for the financial obligations of the Brazilian Mission.” Earnings statements indicate the First Baptist Church of Austin paid the petitioner. Mr. [REDACTED] states that the two organizations share the same address. All of the documentation as it relates to the petitioner’s U.S. employer that is submitted in support of this petition is that of the First Baptist Church of Austin.

However, a July 24, 2003 joint letter from Mr. [REDACTED] and the senior pastor of the First Baptist Church of Austin, Dr. [REDACTED], states that the petitioner “has served as the Pastor of the First Brazilian Baptist Church of Austin, a mission church of the First Baptist Church of Austin, since 1999. The First Baptist Church of Austin has sponsored the [petitioner] in the U.S. and acts as the guarantor for the financial obligations of the Brazilian church.” A February 23, 2001 letter from Dr. [REDACTED] who identifies himself as the head pastor, is on the letterhead of the First Brazilian Baptist Church of Austin, and states that the petitioner “came to our church from Brazil just over sixteen months ago.” The Form I-864, Affidavit of Support Under Section 213A of the Act, signed by Dr. [REDACTED] indicates that the First Brazilian Baptist Church of Austin was the petitioner’s employer on the date the petition was filed. It should be noted that in a letter dated September 9, 2004, counsel for the petitioner advised CIS that the petitioner has resigned his position with the First Baptist Church of Austin.

Neither the church bylaws nor articles of incorporation for the First Baptist Church of Austin mention a Brazilian mission or a Brazilian mission church. Budgets for the First Baptist Church of Austin contain references to a Brazilian mission; however, the budgeted amounts in support of the mission are miniscule (\$1,200 in 1997 and 1998). Therefore, the evidence indicates that the First Brazilian Baptist Church of Austin is a separate entity from the First Baptist Church of Austin, and served as the petitioner’s prospective U.S. employer. Our analysis of the appeal will refer to the First Brazilian Baptist Church of Austin as the petitioner’s prospective U.S. employer.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted copies of the bylaws, and certificate and articles of incorporation for the First Baptist Church of Austin, and a copy of a Texas Sales and Use Tax Exemption Certification for the First Baptist Church of Austin (Brazilian Congregation). The petitioner submitted no evidence that the First Brazilian Baptist Church of Austin (or the First Baptist Church of Austin) was granted tax-exempt status as a bona fide nonprofit religious organization. The petitioner failed to submit evidence to establish that the First Brazilian Baptist Church of Austin was covered under a group tax-exemption granted to a parent organization and failed to provide evidence pursuant to of 8 C.F.R. § 204.5(m)(3)(i)(B).

The evidence does not establish that the First Brazilian Baptist Church of Austin is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 16, 2001. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

In their joint letter of July 24, 2003, Dr. [REDACTED] and Mr. [REDACTED] state that the petitioner has been the pastor of the First Brazilian Baptist Church of Austin since August 1, 1999. The petitioner submitted copies of his 1999, 2000

and 2001 Forms W-2, Wage and Tax Statements and copies of earnings statements from September 1, 1999 to July 15, 2003.

In his letter of February 23, 2001, Dr. [REDACTED] stated that prior to the petitioner's arrival in the United States, he "was on the pastoral staff of the First Baptist Church of Joao Pessoa in Brazil where he served for fifteen years as the full-time Minister of Music . . . His background includes extensive experience in preaching and pastoral care." The petitioner submitted no evidence of his employment in Brazil, and the record does not reflect that he was employed in any capacity from March 1, 1999 to July 1, 1999.

The record does not establish that the petitioner was continuously employed in the religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that he was qualified for the position with the organization.

The petitioner submitted a copy of the record of the 1993 Paraiba Baptist pastors council meeting that ordained him as a minister of the Primeira Igreja Batista (First Baptist Church) in Brazil. The petitioner also submitted a copy of his 1994 diploma from the North Brazil Baptist Theological Seminary with a bachelor's degree in sacred music. The petitioner submitted no evidence of the curriculum and requirements for the awarding of the degree in sacred music. Further, although Dr. [REDACTED] stated that the petitioner had "extensive experience in preaching and pastoral care" prior to his employment with the First Brazilian Baptist Church of Austin, no evidence was submitted to corroborate the petitioner's work prior to his employment in the United States.

Nonetheless, the evidence reflects that the petitioner has served as a pastor with the First Brazilian Baptist Church of Austin, and that he performs the traditional sacerdotal duties, including pastoral counseling, weddings and funeral services. The record indicates that he meets the necessary qualifications required by the church for the proffered position.

Finally, nothing in the record reflects that the proffered position offers temporary or part-time employment. The evidence is sufficient to establish that the proffered position would have been full time, permanent employment, and that the petitioner received a qualifying job offer; however, in a letter dated September 9, 2004, counsel for the petitioner advised CIS that the petitioner had resigned the proffered position as of August 31, 2004.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The First Baptist Church of Austin paid the petitioner's salary, and the evidence indicates that, until his resignation, the church proposed to continue doing so. Nevertheless, the regulation requires the prospective U.S. employer to demonstrate its ability to pay the proffered wage. Further, the regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner did not submit any evidence to establish the financial ability of the First Brazilian Baptist Church of Austin to pay the petitioner a wage.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:**        The appeal is dismissed.